

INITIAL STATEMENT OF REASONS:

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to amend Section 8004 of Article 3, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA's Inmate Employability Program, Inmate Work/Training and Education. Specifically, CALPIA and PIB propose amending Section 8004.1 to address the appearance of potential bias or discrimination against and ensure the inclusion of disabled inmates in work programs by changing the standard for employment from minimum Test of Adult Basic Education (TABE) scores to minimum qualifications to perform duties of the position.

PURPOSE OF PROPOSED REGULATORY ACTION:

This regulatory action is necessary to implement, interpret, clarify and make specific Penal Code (PC) Section 2801 regarding inmate participation for work assignments with CALPIA.

Penal Code (PC) Sections 2801 and 2808 provide the PIB with implied rulemaking authority to establish regulations for developing and operating enterprises to employ prisoners. Penal Code Section 2801(c) provides CALPIA's General Manager with the authority to operate a work program for prisoners.

Pursuant to Government Code section 11342.2, this proposed amendment is consistent with, and not in conflict with, PC sections 2801 and 2808; the proposed regulatory action is reasonably necessary to effectuate the purpose of PC section 2801(c) and amend the regulation to address the appearance of potential bias or discrimination against disabled inmates by changing the standard for employment from minimum TABE scores to minimum qualifications to perform duties of the position.

SPECIFIC PURPOSE AND RATIONALE FOR THE PROPOSED REGULATORY ACTION:

Section 8004.1 is amended to read:

§ 8004.1. CALPIA INMATE WORKER HIRING STANDARDS AND REQUIREMENTS

(a) CALPIA shall fill vacant job/training positions based on the following standards:

- (1) Skill level evidenced by the inmate's technical expertise, ability, and knowledge.*
- (2) Behavior and relationships with others evidenced by the inmate's ability to work with staff and other authority figures, work/training supervisors, and other inmates.*
- (3) Attitude and adaptability evidenced by the inmate's willingness to learn, take directions, and orders.*
- (4) Work/training habits evidenced by the inmate's punctuality, dependability, care of equipment, and safety practices.*
- (5) Formal education and training evidenced by the inmate's preparation for the work/training assignment and the ability to read, write, and speak effectively.*

(6) *Ethnic Balance.* Ethnic balance is achieved by assigning identified ethnicities for CALPIA work/training position in proportion to those represented within the inmate yards at the institution.

(b) *Inmates shall meet a minimum intake requirement of two (2) years and a maximum of five (5) years from their earliest possible release date (EPRD), on the date of application for all CALPIA assignments or apprenticeship/training positions.*

(c) *Inmates assigned from the following locations, may utilize an alternate intake requirement of a minimum of two (2) months and a maximum of 60 months from their earliest EPRD, on the date of application:*

(A) *Reception Centers with a temporary or transient inmate population resulting in inmate worker unavailability.*

(B) *Institutions with a Level 1 inmate population.*

(d) *Inmates shall meet ~~at the~~ minimum education requirement of a Test of Adult Basic Education (TABE) score of ~~97.0~~ prior to assignment ~~qualifications to perform the essential job functions.~~*

~~(e) Institutions with inmate populations whose educational levels do not meet the above minimum education level and are unable to meet CALPIA workforce needs may utilize the alternate intake requirement of a TABE score of 75.0 prior to assignment to a CALPIA position.~~

(f) *Inmates with qualified learning disabilities under the Americans with Disabilities Act of 1990 (ADA), as defined in Section 8000, and who have complied with CCR, Title 15, Division 3, Section 3085, may be accommodated with an exemption to 8004.1(d) ~~or (e)~~, unless the accommodation would result in financial or administrative burden, or unsafe working conditions for CALPIA.*

(g) *Prior to utilizing any of the above alternate intake requirements, a written waiver of authorization shall be obtained annually from the CALPIA General Manager by the Warden at each institution/facility in coordination with the CALPIA Administrator/Lead Manager at each specific enterprise.*

(h) *Within two years of initial CALPIA assignment, CALPIA inmate workers, ~~regardless of their TABE score, shall be required to~~ complete a General Education Diploma (GED) or high school diploma, unless that is not feasible due to disabling conditions documented in the inmates C-File, in which case the inmate worker must be concurrently enrolled in classes to obtain a GED or high school diploma while in a work assignment with CALPIA. CALPIA inmate workers shall remain in their current skill level, as specified in Section 8006(d)(1), while completing a GED or high school diploma and shall not be allowed to promote to a higher pay skill level until this educational requirement is satisfied.*

CALPIA and PIB propose amending Section 8004.1 to address the appearance of potential bias or discrimination against and ensure the inclusion of disabled inmates in eligibility for CALPIA work assignments by changing the standard for employment from minimum TABE scores to minimum qualifications to perform duties of the position. It is the policy of the California Department of Corrections (CDCR) to provide access to its activities, services, and programs to inmates/parolees with disabilities, with or without

reasonable accommodation, consistent with penological interests. No qualified inmate or parolee with a disability is excluded from participation in or denied benefits of activities, services, and programs of CDCR. An inmate may be excluded from CDCR assignment if the inmate would be unable to perform the essential functions of the assignment despite the provision of accommodations and adaptive support services (oral rather than written tests, etc.), the assignment would pose a safety risk, or the provision of accommodation for the assignment would fundamentally alter the program or present an undue financial or administrative burden. Because academic and vocational correctional education reduces post-release recidivism and does so cost-effectively, CALPIA inmate workers remain obligated to be enrolled in an educational program designed to achieve academic and vocational milestones. On average, inmates who participate in correctional education programs have 43 percent lower odds of recidivating than those who did not. Inmates who participate in high school/GED programs have 30 percent lower odds of recidivating than those who had not. Using a three-year reincarceration rate for a hypothetical pool of 100 inmates, the three-year reincarceration costs in 2013 for those who did not receive correctional education were between \$2.94 million and \$3.25 million.

This change to the regulation maintains the current availability of work assignments with CALPIA for qualified inmates without a qualification bar based on TABE score alone while still requiring education participation while on CALPIA assignment. Removing the TABE score requirement complies with the Joint Case Status Statement dated March 15, 2017, PC-CA-0001-0055, in *Armstrong v. Schwarzenegger*, Case No. 4:94-cv-02307-CD (N.D. Cal.). The proposed regulatory action will be vetted through the public process of PIB, as required in PC Section 2808, subsections (h) and (i), and promulgated through the regulatory process as specified in the Administrative Procedure Act (APA). PIB will review these regulations at the next board meeting. Upon approval, the PIB's Record of Vote and the applicable portion of the meeting minutes will be included in the rulemaking file. These documents will be filed with the Office of Administrative Law (OAL).

Consideration of Alternatives:

CALPIA has determined that there are no reasonable alternatives to the proposed regulatory action nor have any reasonable alternatives been brought to the attention of CALPIA that would lessen any adverse impact on small business.

ECONOMIC IMPACT ASSESSMENT

As a result of the economic impact assessment and in accordance with Government Code Section 11346.3(b), CALPIA has made the following assessments regarding the proposed regulation:

CALPIA is self-supporting from the sale of its products and services and operates from the Prison Industries Revolving Fund without any appropriation from the General Fund. Pursuant to Penal Code Section 2806¹, CALPIA's revolving fund is not subject to annual appropriation by the Legislature or oversight by the Department of Finance.

¹ Penal Code § 2806 (Deering's 2017).

²Funds deposited in the revolving fund are not subject to annual appropriation by the Legislature and may be used without a time limit by the authority.

Creation or Elimination of Jobs within the State of California:

CALPIA has determined the proposed regulatory action will have no impact on the creation or elimination of existing jobs or businesses within California as the proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

Creation of New Businesses or Elimination of Existing Businesses within the State of California:

CALPIA has determined that the proposed regulatory action will have no impact on the creation of new or elimination of existing businesses within the State of California as the proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

Significant Statewide Adverse Economic Impact on Business:

CALPIA has initially determined that the proposed regulatory action will not have any statewide adverse economic impact directly affecting businesses as the proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

Expansion of Businesses Currently Doing Business within the State of California:

CALPIA evaluated whether businesses would be affected in the State of California. CALPIA has made the initial determination this proposed regulatory action will not affect the creation of new business, the expansion of existing businesses, or the elimination of existing businesses as the proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

Local Mandates:

CALPIA has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 as the proposed regulation only affects the internal management of CALPIA.

Benefits of the Regulations

CALPIA has evaluated the potential benefits of this proposed regulatory action and made an initial determination that this proposed regulatory action:

- Will have no effect on housing costs.
- Will not impose new mandates upon local agencies or school districts.
- Will involve no nondiscretionary costs or savings to any local agency, no cost to any local agency or school district for which Sections 17500-17630 of the Government Code require reimbursement, nor costs or savings in federal funding to the state.
- Will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California.

The Prison Industries Revolving Fund is not subject to the provisions of Articles 2 (commencing with Section 13320) and 3 (commencing with Section 13335) of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code . . .’

- Will continue to provide a nonmonetary benefit for the protection and safety of public health and safety, by ensuring ongoing efficiency of operations employment inmate workers, and providing work experiences for inmate workers to utilize upon release from custody.

Reports Relied Upon:

- RAND, *Evaluation the Effectiveness of Correctional Education, A Meta-Analysis of Programs that Provide Education to Incarcerated Adults*, Bureau of Justice Assistance, U.S. Department of Justice, 2013.
- Joint Case Status Statement dated March 15, 2017, PC-CA-0001-0055, in *Armstrong v. Schwarzenegger*, Case No. 4:94-cv-02307-CD (N.D. Cal.).